

ORDINANCE NO. 46-394

AN ORDINANCE OF THE CITY OF WICHITA, KANSAS (THE "CITY"), APPROVING CERTAIN CONSTRUCTION AND APPROVING AND AUTHORIZING THE EXECUTION OF A SECOND AMENDMENT TO DEVELOPMENT AGREEMENT REGARDING THE DEVELOPMENT OF THE EAST BANK, BY AND BETWEEN THE CITY AND WATERWALK, LLC, ALL PURSUANT TO CHARTER ORDINANCE NO. 177

WHEREAS, the City of Wichita (the "City") has previously approved WaterWalk, LLC (the "Developer") to serve as developer in connection with the attraction of a destination retailer and the construction of certain public and private improvements in connection with the City's proposed Water Walk development, located in a portion of the East Bank Development District, and is now considering entering into an Second Amendment to Development Agreement Regarding Development of the East Bank (the "Amendment"), which will modify the existing agreement (the "Agreement") to accommodate the construction of a building for use by Gander Mountain Company, and certain related surface parking improvements, a parking structure (including an underlying segment of Water Street) and a pedestrian bridge (collectively, the "Destination Retailer Improvements," as described in the Amendment, and in Exhibit 15 attached thereto); and

WHEREAS, the proposed Amendment and the Agreement, as amended, call for the City to provide a substantial capital contribution, to be raised by the sale of general obligation debt, to help defray a portion of the design and construction costs for the said improvements; and

WHEREAS, the Developer has agreed to furnish adequate sureties for the full and faithful completion of the said improvements, as outlined in the proposed Amendment, and in accordance with the revised, Phase I Development Plan to be approved thereunder; and

WHEREAS, Charter Ordinance No. 177 of the City requires that, prior to commencement of construction of the improvements, the Governing Body of the City must conduct a public hearing to consider whether to implement the subsection of Charter Ordinance No. 177 that allows for development agreements, in the context of these specific improvements, and must adopt, by 2/3 vote of its members, an Ordinance approving the construction under the provisions of Charter Ordinance No. 177; and

WHEREAS, the Governing Body of the City, pursuant to the requirements of Charter Ordinance No. 177, has conducted a public hearing on October 12, 2004, to hear and consider public comment on the question of whether to implement the provisions of Charter Ordinance No. 177 to approve the construction of the subject improvements under the provisions of Charter ordinance No. 177 and the proposed Amendment (and hence, under the Agreement, as amended thereby).

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS AS FOLLOWS:

Section 1. Authorization of Amendment . The City is hereby authorized to enter into the Amendment, by and between the City and WaterWalk, LLC, in substantially the form presented by City Staff for consideration prior to the public hearing of October 12, 2004, together with such revisions and modifications as the Governing Body has directed, following the conclusion of such public hearing.

Section 2. Approval of Construction and of the Sureties Furnished by the Developer. The Governing Body hereby approves the construction of the Destination Retailer Improvements under the provisions of Charter Ordinance No. 177, and further approves (and the City is authorized to accept as sureties for completion of the subject improvements), the labor and materials payment and performance bond to be obtained by the Developer (or its General Contractor, as defined in the Agreement) in the full amount of the estimated cost of completion of the subject improvements.

Section 3. Execution of Documents. The Mayor of the City is hereby authorized and directed to execute the Amendment in substantially the form approved by the Governing Body with such additional minor corrections thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof, and City Staff shall deliver the Amendment for and on behalf of and as the act and deed of the City.

Section 4. Further Authority. The City shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such further action as necessary to carry out and give effect to the transactions contemplated by this Ordinance, the Amendment, and such other documents as are contemplated by the Amendment in connection with the construction of the subject improvements.

Section 5. Effective Date. This Ordinance shall take effect and be in full force from and after its adoption by vote of 2/3 of the members of the governing body of the City of Wichita, Kansas, and publication once in the official newspaper of the City.

PASSED by the Governing Body of the City of Wichita, Kansas this 26th day of October, 2004, with no less than 2/3 of the members voting in favor thereof.

CITY OF WICHITA, KANSAS

By _____
Carlos Mayans, Mayor

ATTEST:

Karen Sublett, City Clerk

(SEAL)

Approved as to Form:

Gary E. Rebenstorf, City Attorney